

REC'D IN
REGULATORY AUTHORITY

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

April 25, 1997

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OFFICE OF THE
EXECUTIVE SECRETARY
In Re:

**BellSouth Telecommunications, Inc.'s Entry Into Long Distance
(InterLATA) Service in Tennessee Pursuant to Section 271 of
the Telecommunications Act of 1996**

Docket No. 97-00309

Brief of American Communications Service, Inc. ("ACSI")

Summary

ACSI, for the reasons explained below, joins with NextLink, MCI, and AT&T in asking the Tennessee Regulatory Authority ("TRA") to hold that for purposes of Section 271 of the Federal Telecommunications Act of 1996 ("the Act"), Tennessee is a "Track A" state.

ACSI, has entered into an interconnection agreement with BellSouth. Pursuant to that agreement, which has been approved by the TRA, ACSI has recently begun offering local exchange telephone service to business customers in the Chattanooga area. ACSI, however, has encountered numerous problems in trying to implement its interconnection agreement with BellSouth.

Because ACSI, along with other carriers, has requested interconnection and access arrangements with BellSouth, BellSouth cannot use Track B as a route to enter the interLATA market. BellSouth must file a Track A application. At this time, Bell itself concedes that the company does not meet the requirements of Track A for entering the in-region, interLATA market.

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I. THE PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996 GOVERNING THE ENTRY INTO IN-REGION INTERLATA SERVICE BY A BELL OPERATING COMPANY

Section 271 of the Act governs the conditions under which a Bell operating company ("BOC"), such as BellSouth, may be allowed to enter into in-region interLATA service. Prior to entry into in-region interLATA service, BellSouth must make an application to the FCC pursuant to Section 271(d) of the Act. Section 271(d)(3)(A) states that the FCC shall not approve the application unless it finds that 1) the Bell operating company has met the Track A or Track B requirements of Section 271(c)(1), discussed more fully below; 2) the Bell operating company will carry out interLATA service in accordance with the requirements of Section 272¹ of the Act; and 3) that the requested authorization is consistent with the public interest, convenience and necessity.

Section 271(c) of the Act requires that a Bell operating company open its markets to local competition prior to being authorized to provide in-region interLATA service. Section 271(c) can be satisfied either by interconnection agreements or a statement of generally available terms and conditions. The provisions governing whether a Bell operating company proceeds to satisfy these requirements using interconnection agreements or a statement of generally available terms and conditions are presented below.

Section 271(c)(1)(A) (commonly referred to as "Track A"):

PRESENCE OF A FACILITIES-BASED COMPETITOR—A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been

¹ Section 272 of the Act requires a Bell operating company providing in-region interLATA service to do so through a separate affiliate. BellSouth has indicated that it will use BellSouth Long Distance, Inc. ("BSLD") for this purpose. ACSI is not aware whether BSLD meets the requirements of a separate affiliate under Section 272 of the Act.

approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. . . .

Section 271(c)(1)(B) (commonly referred to as "Track B").²

(B) FAILURE TO REQUEST ACCESS.—A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f). . . .

Whether local markets are open to competition is evaluated using the fourteen point competitive checklist set forth in Section 271(c)(2)(B). The FCC may not grant a Bell operating company's application for in-region interLATA service unless it satisfies the fourteen point competitive checklist. Section 271(d)(3)(A). The competitive checklist is only satisfied if a Bell operating company meets each of the fourteen points. Section 271(c)(2)(B).

² Section 271(c)(1)(B) includes exceptions to Track A that a Bell operating company shall not be considered to have received any request for access and interconnection if the State commission certifies that the provider or providers making such request have either failed to negotiate in good faith or violated the terms of an interconnection agreement by failing to comply with an implementation schedule contained in such agreement. BellSouth has not indicated that these exceptions would apply.

Section 271(d)(2)(B) of the Act requires the FCC to consult with state regulators prior to making a determination on the Bell operating company's application to determine compliance with the requirements of Track A or Track B under Section 271(c) of the Act.

II. BELLSOUTH CANNOT SATISFY EITHER TRACK A OR TRACK B

BellSouth has stated that BellSouth cannot currently satisfy Track A. At the prehearing conference, BellSouth's attorney explained that this position is based on the absence of a facilities-based competitor servicing residential customers. However, BellSouth further stated that it was unable to state with certainty whether its FCC filing would be made on Track A or Track B because that determination could only be made on the eve of the FCC filing. Only at that time could BellSouth evaluate its interconnection agreements to determine if Track A were satisfied.

ACSI agrees with BellSouth's conclusion that it does not satisfy Track A; however, not solely because of the absence of a competitive provider servicing residential customers. Track A requires that the "Bell operating company is providing access and interconnection to its network facilities" Section 271(c)(1)(A). This active language clearly requires actual access, rather than mere paper promises. Facilities-based competition on the BellSouth system is nascent. ACSI is one of the earliest facilities-based providers of local exchange services in Tennessee, yet ACSI only recently began providing these services in the Chattanooga area.

ACSI has experienced difficulties in providing service despite the existence of a detailed interconnection agreement between ACSI and BellSouth. The lesson to be learned from ACSI's experience is that providing access to BellSouth's local network is a complex process.

BellSouth has not yet implemented all of the services necessary for competitive access. Only by actually implementing access and interconnection can the TRA and competitive providers have any assurance of BellSouth's ability to do so. Until BellSouth actually implements interconnection and access it cannot be deemed to have satisfied Track A.

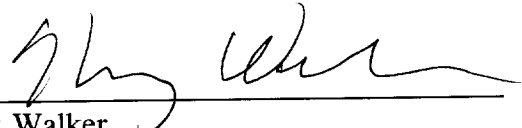
ACSI disagrees with BellSouth's interpretation of Section 271(c)(1) that Track B is available to BellSouth because of BellSouth's determination it does not meet Track A. Track B is not the default for BOCs in cases where Track A cannot be met. Rather, Track B is only available in the very limited circumstance where no Track A provider requests interconnection and access. Numerous competitive carriers have requested interconnection with BellSouth. Because of these requests for interconnection, BellSouth cannot proceed on Track B. Rather, BellSouth must instead concentrate on opening its local markets to competition in fulfillment of its obligations under these interconnection agreements in order to meet Track A.

Contrary to BellSouth's claims that Track A allows its competitors to control its interLATA entry, BellSouth controls the timing of its Track A compliance based on the quality and timeliness of the opening of its local markets to competition. For example, BellSouth may claim that the decision not to provide residential facilities-based services rests solely with its competitors; however, as ACSI's testimony in this proceeding will demonstrate, BellSouth's rates for unbundled elements create a price squeeze making it economically infeasible to serve residential customers.

CONCLUSION

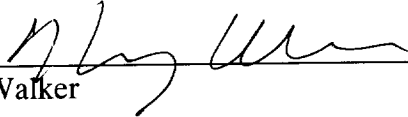
For these reasons, Bell cannot qualify under Track A, and Track B is not available to BellSouth because of the dozens of competitive carriers that have entered interconnection agreements with BellSouth.

Respectfully submitted,


Henry Walker

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Brief has been forwarded via U.S. Mail to all parties of record and via facsimile on this 25th day of April, 1997.


Henry Walker